

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42006

OMAHA PUBLIC POWER DISTRICT
v.
UNION PACIFIC RAILROAD COMPANY

Decided: August 25, 1997

In a verified complaint filed, and served on defendant, Union Pacific Railroad Company (UP), on June 20, 1997, Omaha Public Power District (OPPD) alleges that a switching charge assessed by UP to move OPPD's unit trains of coal from an alleged interchange with The Burlington Northern and Santa Fe Railway Company (BNSF)¹ to OPPD's North Omaha Power Station, a distance of approximately 5 miles, exceeds a maximum reasonable level.² OPPD alleges that UP possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed, along with related rules and service terms for the switch movement. On July 10, 1997, UP filed a timely answer, and, on July 29, 1997, a motion to dismiss, to which OPPD replied on August 18, 1997. OPPD filed on August 13, 1997, an amended complaint.

On August 19, 1997, UP filed a motion to compel production of certain documents allegedly in the possession of OPPD. This motion expands upon a prior motion to compel production of documents, filed July 24, 1997. Because UP expects to begin deposing witnesses during the last week in August, and allegedly requires the disputed documents to conduct effective depositions, it requests an expedited decision on its motion and an order that OPPD produce responsive documents by August 25, 1997. In the alternative, it asks that the deadline for discovery be extended to September 17 (or a later date).

As a general rule, a motion to dismiss will not delay the procedural schedule in a coal rate complaint proceeding. In this case, however, it is likely that the Board will rule on the motion to dismiss in the very near future. For that reason, and because the filing of OPPD's amended complaint--which simply added a request for reparations, apparently in response to certain points made in UP's motion to dismiss--may well constitute a new complaint for purposes of decisional deadlines, it would be inappropriate to force parties to rush through discovery at this time. Accordingly, UP's motions to compel will not be addressed at this time, and the deadline for completing discovery will be suspended until further notice.

It is ordered:

1. The deadline for completion of discovery is suspended until further notice.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

¹ The coal movements are transported by BNSF from origin coal mines in the Powder River Basin of Wyoming to the UP interchange point under a rail transportation contract denominated ICC-BN-C-2205. BNSF absorbs a portion of the UP switching charge.

² UP provides the switching service pursuant to the applicable rates and terms in Freight Tariff UP 8005-D.